

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**WAYNCO SHEET METAL, INC.**

**Beaumont, Texas**

**Employer**

**and**

**Case 16-RC-10704**

**SHEET METAL WORKERS, LOCAL  
UNION NO. 54, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Employer, Waynco Sheet Metal, Inc., is engaged in the construction industry as a heating, ventilation, and air conditioning contractor fabricating and installing sheet metal for use in HVAC systems and ventilations ducts. The Petitioner, Sheet Metal Workers, Local Union No. 54, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all employees classified as sheet metal workers and helpers employed by the Employer. A hearing officer of the Board held a hearing and the parties filed briefs with me. The employees in the petitioned-for unit are not covered by a collective bargaining agreement and the parties have no prior bargaining history.

The unit sought by the Petitioner includes all employees employed by the Employer, including the employees who work at the Beaumont, Texas fabrication and installation facility and the Pascagoula, Mississippi jobsite. The Employer argues that the appropriate unit should not include employees who work at the Pascagoula, Mississippi jobsite.

## **I. ISSUE**

The issues are: (1) whether the employees who work at Pascagoula, Mississippi jobsite share a sufficient community of interest with the employees who work at the Employer's Beaumont, Texas fabrication and installation facility to constitute an appropriate unit; and (2) whether employee Billy Truax is a supervisor within the meaning of Section 2(11) of the Act and should therefore be excluded from an appropriate bargaining unit.

For the reasons set forth below, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit. I further find the Petitioner failed to establish that Billy Truax is a supervisor within the meaning of the Act.

To lend context to my discussion of the issues, I will first provide an overview of the Employer's operations, followed by a community of interest analysis and a supervisory status analysis.

## **II. OVERVIEW OF EMPLOYER'S OPERATIONS**

Danny Babineaux is the president and owner of Waynco and another company, Air Comfort, Incorporated. Babineaux purchased Waynco in 2000 from Wayne Chapman, the current manager of Waynco. The parties stipulated that President Danny Babineaux and Manager Wayne Chapman are supervisors as defined by Section 2(11) of the Act. The evidence reflects that each possesses the authority to hire and fire employees. I, therefore, find that they are supervisors within the meaning of Section 2(11) of the Act.

Waynco fabricates and installs sheet metal used for HVAC systems and ventilation duct. It also sells its product without providing the installation service. Waynco's single fabrication and installation facility is located in Beaumont, Texas on Calder Street. Waynco employees work in the Beaumont office, where sheet metal is fabricated, and provide installation services at

various locations in the Greater Beaumont area, Mississippi and elsewhere. Waynco employs 11 mechanics and helpers.

The Employer is a subcontractor to Air Comfort on a job in Pascagoula, Mississippi. Waynco is charged with installing a ventilation system on an offshore drilling rig, which is currently dockside. The expected completion date of this project is April-May 2006. The record reflects the Employer expects to reduce its manpower at the conclusion of the Mississippi job, based on the availability of other work. The sheet metal used on this project is fabricated at the Beaumont facility. The Mississippi job is currently staffed with four to five employees who temporarily reside in housing purchased and provided by the Employer due to the shortage of housing caused by Hurricane Katrina.

The employees who work in Mississippi reside in the Beaumont, Texas area and alternate travel to and from Beaumont every two weeks. This travel usually commences on a Friday. After the employees return to Beaumont, they work the remainder of the day at the Beaumont facility. The employees spend the weekend at their respective homes with their families and then return to Mississippi on Monday, transporting materials back to the Mississippi jobsite.

The Employer is also currently engaged in another project in Beaumont, Texas at Saint Elizabeth Hospital. The record reflects manpower may also be reduced upon completion of the Saint Elizabeth Hospital job, based on the availability of other work.

### **III. COMMUNITY OF INTEREST**

The applicable inquiry in the determination of unit composition is whether the employees in the petitioned-for unit share a sufficient community of interest. Several factors weigh in this determination, including the degree of functional integration, existence of common supervision, nature of employee skills and functions, interchangeability and contact among employees, work situs, general working conditions, and wages and fringe benefits.

## **A. Facts**

Employees apply for positions, interview, and are hired in Beaumont. In addition, all employees initially work in Beaumont and, as referenced above, are from the Beaumont area. All employees have performed fabrication work at the Beaumont facility producing materials that are used at the Mississippi jobsite. The employees who have worked or are currently working in Mississippi have performed fabrication work at the Beaumont facility for about one-half of a day on the days they return from Mississippi to Beaumont. These employees also transport the materials back to Mississippi.

The record reflects that one employee was asked during his interview whether he was willing to travel. He was not, however, told that he was being considered for a particular job in Mississippi and, upon completion of that job, he would be laid off.

The record reflects that three employees—Billy Truax, Sebastian Lopez and Gregory Williams—work at the Beaumont facility. Employee Farron Bean, the most recent hire, was hired in Beaumont to work at the Mississippi jobsite. The Mississippi job was initially staffed by David McClelland (who was hired in August 2005), Wayne Chapman (owner), and Wesley Chapman. This group was at the Mississippi jobsite for approximately one week before the area was evacuated as a result of Hurricane Katrina. Wayne Chapman, Wesley Chapman and McClelland returned to the Mississippi project in October 2005. They were joined by Larry Gibson, who has been employed by Waynco since June or July 2004. The Employer transferred McClelland and Larry Gibson back to Beaumont in late October or early November 2005. Danny Gibson (who was hired in Beaumont in June or July 2004), James and Charles Riley (who were both hired in or around September 2005) and Bean are currently assigned to the Mississippi project. Jarod Johnson works at the Saint Elizabeth Hospital site with Larry Gibson and Williams. Johnson has also worked on the Mississippi job.

The record reflects that supervision is centralized in Beaumont. Wayne Chapman supervises the Beaumont facility and travels periodically to the Mississippi jobsite to verify that the work is properly completed and resolve any issues. Billy Truax oversees the Beaumont employees in Wayne Chapman's absence. Project Manager Eric Band, an employee of Air Comfort, also oversees the employees who work on the Mississippi jobsite. On the Mississippi jobsite, Charles Riley serves the same function as Billy Truax serves in Beaumont. The parties stipulated that Charles Riley, a leadperson, is not a supervisor within the meaning of Section 2(11) of the Act. The evidence reflects that Riley works with his tools one hundred percent of the time. He does not possess the authority to hire, fire or discipline. Based on the evidence, I find that Charles Riley is not a supervisor within the meaning of Section 2(11).

The terms and conditions of employment are the same for all employees, whether the employees work in Beaumont or Mississippi. Helpers earn \$10-\$15 per hour and mechanics earn \$15-\$18 per hour, with the exception of Billy Truax, who earns \$18.75 per hour. All employees are provided \$25 per diem when they travel away from the Greater Beaumont area and housing while working in Mississippi. All employees are eligible to participate in a 401(k) plan. All employees receive one week vacation per year after one year of employment, six paid holidays, and one paid day off—the Friday after Thanksgiving. Finally, all employees are eligible for health insurance benefits after they have been employed for 90 days.

## **B. Analysis**

The Act does not require that the bargaining unit be the only unit or the most appropriate unit, but only that the unit be "appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd. on other grounds* 190 F.2d 576 (7<sup>th</sup> Cir. 1951); *Dezcon, Inc.*, 295 NLRB 109 (1989). In evaluating the appropriateness of a petitioned-for bargaining unit, the Board relies on the community of interest standard. *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Dezcon, Inc.*,

295 NLRB 109 (1989); *McCann Steel Co.*, 179 NLRB 635 (1969); *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962); *Peerless Products Co.*, 114 NLRB 1586 (1955); *San Antonio Machine & Supply Co.*, 85 NLRB 143 (1949). The inquiry is limited to whether the petitioned-for unit is an appropriate unit. A finding that the petitioned-for unit constitutes an appropriate unit ends the inquiry. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989); *Bartlett Collins Co.*, 334 NLRB 484 (2001). “When the Board is faced with more than one location of a single employer, these factors have been found particularly relevant: bargaining history; functional integration of operations; the similarity of skills, duties, and working conditions of employees; centralization of control of labor relations and supervision, particularly in regard to hiring, discipline, and control of day-to-day operations; and interchange of employees among construction sites.” *Dezcon, Inc.*, 295 NLRB 109, 111 (1989) (citations omitted).

The petitioned-for unit is comprised of employees who perform installation and fabrication work out of the Beaumont facility. The Employer seeks to characterize its Mississippi operation as a wholly independent, autonomous operation, such that employees currently assigned to the Mississippi job should not be included in the same unit as the Beaumont employees. The facts do not support this characterization. Where labor relations are centralized at one location, and where an employer employs employees on a multi-site basis and temporarily moves employees from one jobsite to another, a geographically-limited unit is not appropriate. *Oklahoma Installation Co.*, 305 NLRB 812 (1991). Like in *Oklahoma Installation Co.*, here, the Employer’s hiring and supervision are centralized in Beaumont, where Manager Wayne Chapman spends the majority of his time. Further, the employees in Mississippi return to their homes in the Beaumont area every two weeks and, during the course of this travel, perform fabrication work at the Beaumont facility. The employees working in Mississippi are therefore employed on a multi-site basis. Finally, the evidence reflects that

employees are assigned among several jobsites—the Mississippi jobsite, the Beaumont facility, and the Saint Elizabeth Hospital jobsite—on a temporary basis, as required by the job. The record evidence does not reflect that the Mississippi jobsite is a separate, independent operation, it is merely one site similar to the Saint Elizabeth Hospital jobsite.

A unit consisting of employees who fabricate materials at one location and install the materials at various jobsites is an appropriate unit. *San Antonio Machine & Supply Co.*, 85 NLRB 143 (1949). In *San Antonio Machine & Supply Co.*, the Board found sufficient community of interest among a group of employees comprised of fabrication employees who worked in a shop and outside erection employees who installed the fabricated parts. The outside erectors spent about twenty percent of their time working in the shops, and some commuted 175 miles to jobsites. *Id.* Here, like in *San Antonio Machine & Supply Co.*, the employees in the petitioned-for unit are each capable of performance of in-shop fabrication work and outside installation work. In fact, the employees in the petitioned-for unit are interchangeable not only among different jobsites, but each employee has the ability to alternate in the performance of installation work on the jobsite to fabrication work in the shop as needed by the Employer. Materials to be used on the Mississippi jobsite are fabricated in Beaumont. The evidence reflects that the Beaumont facility and the Mississippi jobsite are highly functionally integrated.

Further, the record does not reflect a distinction among employees working in Mississippi and the employees working in Beaumont. All the employees share similar skills, duties and working conditions and employees have, in fact, moved between the Beaumont facility and the Mississippi jobsite. The employees are paid the same wages and receive the same benefits regardless of their worksite, with the exception of Truax, the foreman, who is paid a slightly higher hourly wage than the other mechanics and is permitted to use the company truck to commute to and from work. All employees perform fabrication work and installation work

interchangeably.

With respect to management and employment decisions, the record reflects they are centralized under President Danny Babineaux and Manager Wayne Chapman, who maintain their respective offices in Beaumont. The day-to-day operations are centralized in the Beaumont facility where all orders are received and processed, and where all the materials to be used in the field are fabricated. Supervision is similarly centralized. Wayne Chapman supervises both the Beaumont employees and the Mississippi employees, with the assistance of Truax and Charles Riley and occasionally travels to the Mississippi jobsite.

In its Brief, the Employer argues that there are two distinct groups of employees—those who work in Beaumont and those who spend the majority of their time in Mississippi. The Employer asserts that an identified group of employees was hired with the understanding that they should expect travel and they would not be working in Beaumont. The record evidence does not support this contention. On the contrary, the record reflects that the employees working at the Mississippi jobsite have been interchanged and transferred back and forth to Beaumont. Specifically, the evidence reflects that the employees who have worked in Mississippi or who are working in Mississippi were hired at different times and have performed work both in Beaumont and Mississippi. As noted above, although one employee was asked during his interview if he were willing to travel, he was not advised that his employment would be limited to the Mississippi job.

In sum, the record evidence reflects that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate bargaining unit. The evidence demonstrates functional integration between the Beaumont facility and other jobsites, including the Mississippi jobsite. In addition, the employees regularly interchange among the Beaumont facility and other jobsites, including the Mississippi jobsite. Labor relations and the supervision



of day-to-day operations are centralized in Beaumont. Finally, the employees share similar skills, duties and working conditions. Based on the foregoing, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit.

#### **IV. SUPERVISORY STATUS**

As referenced above, the Petitioner asserts that Billy Truax is a supervisor as defined in Section 2(11) of the Act. Supervisory status, which determines whether an employee must be excluded from an appropriate unit, is based on an employee's possession of one of twelve statutory indicia—the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or direct employees; adjust grievances; or to effectively recommend such action.

##### **A. Facts**

The record reflects that Truax does not possess the authority to hire, fire, or discipline. He works with his tools 75 percent of the time and engages in production planning using specialized software the other 25 percent of the time. He inspects the work of the other employees and instructs them how to correct deficiencies. In addition, he trains the employees on the use of any new equipment. The evidence reflects that on one occasion he granted time off to an employee who had a family emergency. He discusses work assignments with Manager Wayne Chapman and assigns and oversees work in the absence of Chapman. Truax does not possess the authority to assign overtime work without first discussing it with Wayne Chapman. The record reflects Wayne Chapman works away from the Beaumont facility an average of one day per week and has never been away from the Beaumont facility for a period longer than one week. Truax receives job requests and accepts or declines work based upon his initial determination of the availability of manpower and materials. However, the record reflects that Truax does not have the authority to bind the Employer on a bid. Truax does not interview

applicants but provides applications to potential employees and instructs applicants to return the applications to Wayne Chapman. Truax is paid an hourly wage of \$18.75 and uses the company truck for his daily commute.

## **B. Analysis**

Supervisors are excluded from an appropriate unit under Section 2(11) of the Act. The party asserting supervisory status has the burden of proof. *See Ohio Masonic Home*, 295 NLRB 390 (1989); *Kentucky River Community Care, Inc.*, 532 U.S. 706, 712 (2001). In the instant case, the Petitioner contends that Truax is a supervisor and therefore should be excluded from any unit found appropriate herein. A supervisor, as defined under the Act is:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statute is interpreted in the disjunctive; therefore, to meet the statutory definition, an individual need possess only one of the twelve indicia, or have the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949).

The Petitioner has failed to demonstrate that Truax is a supervisor within the meaning of Section 2(11). Truax does not possess the authority to hire, fire, or discipline employees, nor does he exercise independent judgment in the recommendation of such. Truax generally oversees the work of other employees and works with his tools as a mechanic 75 percent of the time. He does not have the authority to approve overtime. Truax's direction of the work of other employees is routine in nature and typical of a leadperson. *See, e.g., Central Plumbing Specialties*, 337 NLRB 973 (2002); *Consolidated Services*, 321 NLRB 845 (1996). Further, Truax does not have the authority to contractually bind the Employer to a job. Based on the

record evidence, I find that Truax is not a supervisor within the meaning of Section 2(11) of the Act. The evidence reflects and I find that Truax shares a sufficient community of interest with the mechanics and helpers employed by the Employer. Therefore, I will include Truax in the unit found appropriate herein.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that the Employer, a Texas corporation with an office in and place of business in Beaumont, Texas, is engaged in the construction industry as a heating, ventilation, and air conditioning contractor. During the past 12 months, the Employer performed services valued in excess of \$50,000 in states outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All sheet metal workers and helpers employed by Waynco Sheet Metal, Inc.

**EXCLUDED:** All other employees and supervisors as defined in the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Sheet Metal Workers, Local Union No. 54, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Houston Resident Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are 1) persons in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off; 2) persons in the bargaining unit who were employed by the Employer for 30 days or more within the 12 months preceding the eligibility date of the election (i.e., the last day of the payroll period immediately preceding the date of this Decision); and 3) persons in the bargaining unit who were employed by the Employer for at least some time in the 12 months preceding the eligibility date of the election, and for 45 days or more within the 24 months preceding the eligibility date of the election.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Houston Resident Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Federal Office Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002, on or before February 14, 2006. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Houston Resident Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on February 21, 2006. The request may **not** be filed by facsimile.

In the Resident Office's initial correspondence, the parties were advised that the National Labor Relation Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Resident Office's initial

correspondence for guidance in doing so. The guidance may also be found under “E-Gov” on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).

Dated: February 7, 2006

/s/ Martha Kinard  
Martha Kinard, Acting Regional Director  
National Labor Relations Board  
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